

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

09 CV 9715

DYNACORP INTERNATIONAL and  
FIDELITY & CASUALTY COMPANY  
OF NEW YORK/CNA  
INTERNATIONAL,

Plaintiffs/Petitioners,

v.

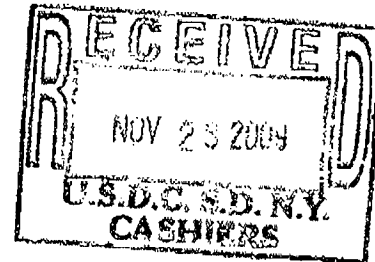
ELIZABETH A. MECHLER

Defendant/Respondent, and

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,  
UNITED STATES DEPARTMENT OF  
LABOR,

Defendant/Respondent.

Case No.



COMPLAINT/PETITION FOR REVIEW

Plaintiffs/Petitioners DynCorp International and Fidelity & Casualty Company of New York/CNA International, through the allegations in this pleading that are set forth below, respectfully petition the Court for review of the Decision and Order of the Benefits Review Board in *Elizabeth Mechler v. DynCorp International, et al.*, BRB No. 09-0703, issued on September 30, 2009, in connection with a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq.*, as extended by the Defense Base Act, 42 U.S.C. § 1651, *et seq.*

**PARTIES**

1. Plaintiff/Petitioner DynCorp International FZ-LLC (“Employer”) is a Dubai UAE Free Zone company, having its principal place of business in Falls Church, Virginia.

2. Plaintiff/Petitioner Fidelity & Casualty Company of New York/CNA International (“Carrier”) is a corporation duly organized and existing under the laws of the state of Illinois, having its principal place of business in Chicago, Illinois.

3. Upon information and belief, Defendant/Respondent Elizabeth Mechler is an individual residing in the state of Kansas.

4. Defendant/Respondent Director, Office of Workers’ Compensation Programs, United States Department of Labor is an administrator in the agency whose action is the subject of this pleading.

**FACTUAL BACKGROUND**

5. This case arises out of a claim for medical and compensation benefits by Elizabeth Mechler against Employer and Carrier under the Longshore and Harbor Workers’ Compensation Act (“LHWCA”), 33 U.S.C. 901, *et seq.*, as extended by the Defense Base Act (“DBA”), 42 U.S.C. § 1651, *et seq.*

6. Elizabeth Mechler (hereinafter “Mechler”) brought a claim under the LHWCA as extended by the DBA for benefits for injuries that she alleges to have sustained on April 17, 2004 while she was employed by Plaintiff/Petitioner DynCorp International in Kosovo.

**JURISDICTION AND VENUE**

16. This Court has jurisdiction over this action under 42 U.S.C. §1653(b) in that judicial proceedings provided for in §921(c) of the Longshore and Harbor Workers' Compensation Act are being requested in respect to the Decision and Order of the Benefits Review Board dated July 30, 2008. 33 U.S.C. §921(c).

17. Venue is proper under 42 U.S.C. §1653(b) in that the office of the District Director of the Office of Workers' Compensation Programs of the United States Department of Labor from which the underlying claims originated is located within the judicial district encompassed by this Court.

**SUBSTANTIVE ISSUES PRESENTED FOR REVIEW**

18. The Benefits Review Board erred in reversing the finding of the administrative law judge that Mechler's claim was not timely presented. The initial finding of the administrative law judge that Mechler's claim was untimely was supported by substantial evidence, was rational and was made in accordance with the applicable law.


**RELIEF SOUGHT**

WHEREFORE, Plaintiffs/Petitioners DynCorp International and Fidelity & Casualty Company Of New York/CNA International respectfully pray that this Court reverse the September 30, 2009 Decision and Order of the Benefits Review Board.

DATED: Albany, New York  
November 20, 2009

WHITEMAN OSTERMAN & HANNA LLP

By:

  
\_\_\_\_\_  
William S. Nolan (WSN8091)  
Whiteman Osterman & Hanna LLP  
Attorneys for Plaintiffs/Petitioners  
DYNCORP INTERNATIONAL and  
FIDELITY & CASUALTY COMPANY OF  
NEW YORK/CNA INTERNATIONAL  
One Commerce Plaza  
Albany, NY 12260  
Telephone: (518) 487-7773  
Fax (518) 487-7777

THOMAS, QUINN & KRIEGER, LLP  
*(Pro Hac Vice Application to be Submitted)*  
199 Fremont Street, 20<sup>th</sup> Floor  
San Francisco, California 94105  
Telephone (415) 546-6100  
Facsimile (415) 358-5868

7. Carrier provided to Employer insurance coverage for Mechler's claim under a DBA insurance policy.

8. On January 23, 2007, there was a trial before the administrative law judge in connection with Mechler's workers' compensation claim against Employer/Carrier. The sole issue at the administrative trial was the threshold issue of whether Mechler's claim was timely filed under §913 of the LHWCA, 33 U.S.C. §913.

9. On or about August 31, 2007, the administrative law judge issued a Decision and Order in which she denied Mechler's claim for benefits on the basis that the claim had not been timely filed. [See Exhibit 1.]

10. Mechler appealed the August 31, 2007 Decision and Order of the administrative law judge to the Benefits Review Board.

11. On or about July 30, 2008, the Benefits Review Board issued its Decision and Order reversing the administrative law judge's finding that Mechler's claim was untimely filed. [See Exhibit 2]. The matter was remanded to the administrative law judge for further findings.

12. The administrative law judge issued a new order that was filed with the District Director on June 3, 2009. [See Exhibit 3].

13. The employer carrier filed a timely notice of appeal of that order on June 24, 2009.

14. On September 30, 2009, the Benefits Review Board issued its Decision and Order upholding the administrative law judge's new findings. [See Exhibit 4].

15. The September 30, 2009 Decision and Order of the Benefits Review Board is an order from which an appeal may be taken.